

## Office of the Secretary of Labor

## § 34.33

is in the exclusive possession of another agency or institution which, or person who, fails or refuses to furnish such information, the grant applicant or recipient shall provide certification to the Directorate of such refusal and the efforts it has made to obtain the information.

(c) *Record retention requirements.* (1) Each recipient shall maintain for a period of not less than three years from the close of the applicable program year, applicant, eligible applicant, participant, terminatee, employee and applicant for employment records; and such other records as are required under this part or by the Director. (2) Records regarding complaints and actions taken thereunder shall be maintained for a period of not less than three years from the date of resolution of the complaint.

(d) *Confidentiality.* The identity of any person who furnishes information relating to, or assisting in, an investigation or a compliance review shall be kept confidential to the extent possible, consistent with a fair determination of the issues. A person whose identity it is necessary to disclose shall be protected from retaliation (see § 34.8).

(e) Where designation of persons by race or ethnicity is required, the guidelines of the Office of Management and Budget shall be used.

### Subpart C—Governor's Responsibilities To Implement the Nondiscrimination and Equal Opportunity Requirements of JTPA

#### § 34.30 Application.

This subpart applies to State Programs as defined in § 34.2. However, the provisions of § 34.32 (b) and (c) do not apply to State Employment Security Agencies (SESAs), because the Governor's liability for any noncompliance on the part of a SESA cannot be waived.

#### § 34.31 Recordkeeping.

The Governor shall ensure that recipients collect and maintain records in a manner consistent with the provisions of § 34.24 and any procedures prescribed by the Director pursuant to § 34.24(a)(1). The Governor shall further

ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

#### § 34.32 Oversight and liability.

(a) The Governor shall be responsible for oversight of all JTPA-funded State programs. This responsibility includes ensuring compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part, and negotiating with the recipient to secure voluntary compliance when noncompliance is found under § 34.45.

(b) The Governor and the recipient shall be jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of JTPA and this part by the recipient, unless the Governor has:

(1) Established and adhered to a Methods of Administration, pursuant to § 34.33, designed to give reasonable guarantee of the recipient's compliance with such provisions;

(2) Entered into a written contract with the recipient which clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;

(3) Acted with due diligence to monitor the recipient's compliance with these provisions; and

(4) Taken prompt and appropriate corrective action to effect compliance.

(c) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (b) of this section, he or she may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient.

#### § 34.33 Methods of Administration.

(a)(1) Each Governor shall establish and adhere to a Methods of Administration for State programs as defined in § 34.2. In those States in which one agency contains both SESA and JTPA programs, the Governor may develop a combined Methods of Administration.

(2) Each Methods of Administration shall be designed to give reasonable guarantee that all recipients will comply and are complying with the nondiscrimination and equal opportunity provisions of JTPA and this part.

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(b) The Methods of Administration shall be:

(1) In writing;

(2) Updated periodically as required by the Director; and

(3) Signed by the Governor.

(c) The Methods of Administration shall, at a minimum:

(1) Describe how the requirements of §§ 34.20, 34.21, 34.22, 34.23, 34.24, 34.31, and 34.42 have been satisfied; and

(2) Include the following additional elements:

(i) A system for periodically monitoring the compliance of recipients with this part, including a determination as to whether the recipient is conducting its JTPA-funded program or activity in a nondiscriminatory way;

(ii) A system for reviewing the nondiscrimination and equal opportunity provisions of job training plans, contracts, assurances, and other similar agreements;

(iii) Procedures for ensuring that recipients provide accessibility to individuals with disabilities;

(iv) A system of policy communication and training to ensure that members of the recipients' staffs who have been assigned responsibilities pursuant to the nondiscrimination and equal opportunity provisions of JTPA or this part are aware of and can effectively carry out these responsibilities;

(v) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(vi) Supporting documentation to show that the commitments made in the Methods of Administration have been and/or are being carried out. Supporting documentation includes, but is not limited to: policy and procedural issuances concerning required elements of the Methods of Administration; copies of monitoring instruments and instructions; evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated pursuant to this part; information reflecting the extent to which Equal Opportunity training, including training called for by § 34.22, is planned and/or has been carried out; as applicable, reports of monitoring reviews and reports of follow-up actions taken thereunder where violations

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have been found, including, where appropriate, sanctions; and copies of any notification made pursuant to § 34.23.

(d) The Governor shall, within 180 days of the effective date of this part:

(1) Develop and implement Methods of Administration consistent with the requirements of this part, and

(2) Submit a copy of the Methods of Administration to the Director.

#### **§ 34.34 Monitoring.**

(a) The Director may periodically review the adequacy of the Methods of Administration established by a Governor, as well as the adequacy of the Governor's performance under that Methods of Administration, to determine compliance with the requirements of § 34.33. The Director may review the Methods of Administration during a compliance review under § 34.40, or at another time.

(b) Nothing in this subpart shall limit or preclude the Director from monitoring directly any JTPA recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of JTPA or this part.

(c) The procedures contained in subpart D of this part shall apply to reviews or investigations undertaken pursuant to paragraphs (a) and (b) of this section.

### **Subpart D—Compliance Procedures**

#### **§ 34.40 Compliance reviews.**

(a) The Director may from time to time conduct pre- and post-approval compliance reviews of grant applicants for and recipients of Federal financial assistance under JTPA to determine compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part. Techniques used in such reviews may include desk reviews, on-site reviews, and off-site analyses.

(b) *Pre-approval reviews.* (1) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of JTPA or this part, the Director may review any application, or class of applications, for Federal financial assistance under JTPA prior to and as a condition